

Introduced by Senator Romero

February 20, 2003

An act to ~~amend Section 1171.5 of~~ *add Section 6333 to* the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 534, as amended, Romero. Employment rights.

Under existing law, the ~~protections, rights, and remedies of state law are available without regard to the immigration status of persons, except as prohibited by federal law~~ *Occupational Safety and Health Standards Board may adopt occupational safety and health standards.*

This bill would ~~specify that the applicable federal law is the Immigration Reform and Control Act of 1986~~ *prohibit the use of a short-handled hand tool in agricultural operations, if the use of the tool requires an employee to stoop, kneel, or squat, and would further prohibit the use of a long-handled hand tool in a stooped, kneeling, or squatting position. The bill would further require employers to limit hand weeding, thinning, or hot-capping and to provide employees with protective equipment and additional rest breaks if kneeling is required. The bill would further provide that a violation of the bill would be deemed to be a violation of an occupational safety and health standard.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1171.5 of the Labor Code is amended to~~
2

1 SECTION 1. Section 6333 is added to the Labor Code, to
2 read:

3 6333. (a) Hand-held tools shall be kept in good condition
4 and be safely stored.

5 (b) The use of a short-handled hoe or any other short-handled
6 tool is prohibited in agricultural operations, as defined in Section
7 3437 of Title 8 of the California Code of Regulations, for weeding,
8 thinning, or hot-capping when the tool is used in a stooped,
9 kneeling, or squatting position. Employees engaged in weeding,
10 thinning, or hot-capping shall use a long-handled hand tool, as
11 defined in Section 3437 of Title 8 of the California Code of
12 Regulations, provided by the employer, except when one or more
13 of the following conditions applies:

14 (1) The work is performed in a manner that does not require an
15 employee to stoop, kneel, or squat.

16 (2) (A) Crops are grown under continuous plastic mulch or
17 woven cloth sheets.

18 (B) The exception provided in subparagraph (A) does not apply
19 to spaces between crop beds or in any other circumstance where
20 continuous plastic mulch or woven cloth sheets are not present,
21 and does not apply when the use of an appropriate long-handled
22 hand tool to weed under or near the continuous plastic mulch or
23 woven cloth sheets is possible.

24 (3) (A) The employer can demonstrate that proper use of an
25 appropriate long-handled hand tool and any available
26 mechanical or cultural non-hand weeding alternative can
27 reasonably be expected to significantly damage the crop at the
28 crop's current state of development.

29 (B) To meet the burden of proof required for the exception
30 provided in subparagraph (A), an employer must be able to
31 demonstrate all of the following:

32 (i) There was a systematic effort to attempt to properly use each
33 appropriate long-handled hand tool and each available non-hand
34 weeding alternative to weed or thin the field for which an exception
35 is claimed.

36 (ii) The attempt to use these tools and alternatives caused
37 significant damage to the crop.

38 (iii) The attempt was conducted in an area of the field which
39 was representative of weed conditions observed throughout the
40 entire field.

(iv) Where weed conditions in the field permitted, appropriate long-handled hand tools or available non-hand weeding alternatives are used at all times.

(c) A long-handled hand tool used to weed, thin, or hot-cap shall not be used as a short-handled hand tool in a stooped, kneeling, or squatting position.

(d) When paragraph (2) or (3) of subdivision (b) prevent the use of a long-handled hand tool, the employer shall do all of the following:

(1) The employer shall prohibit employees from using a short-handled hand tool, as defined in Section 3437 of Title 8 of the California Code of Regulations, if the use of the tool requires an employee to stoop, kneel, or squat.

(2) The employer shall reduce or eliminate the degree of hand weeding, thinning, or hot-capping required, by implementing available administrative or engineering controls, or both.

(3) The employer shall provide personal protective equipment, including gloves and, if work is performed in a kneeling position, knee pads, and shall provide additional rest breaks during each four-hour shift.

(e) Nothing in this section is intended to prohibit brief, isolated hand weeding, thinning, or hot-capping that is incidental to the use of a long-handled hand tool, provided that the employee immediately returns to an erect, upright position and continues use of a long-handled hand tool after picking an occasional weed.

(f) A violation of this section shall be deemed to be a violation of an occupational safety and health standard within the meaning of Section 6305.

read:

~~1171.5.— The Legislature finds and declares the following:~~

~~(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by the Immigration Reform and Control Act of 1986 (P.L. 99-603), are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.~~

~~(b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration~~

1 ~~status except where the person seeking to make this inquiry has~~
2 ~~shown by clear and convincing evidence that the inquiry is~~
3 ~~necessary in order to comply with federal immigration law.~~

4 ~~(c) The provisions of this section are declaratory of existing~~
5 ~~law.~~

6 ~~(d) The provisions of this section are severable. If any~~
7 ~~provision of this section or its application is held invalid, that~~
8 ~~invalidity shall not affect other provisions or applications that can~~
9 ~~be given effect without the invalid provision or application.~~

